

ARKANSAS SUPREME COURT

No. CR 07-52

NOT DESIGNATED FOR
PUBLICATION

JARVIS RHODES
Petitioner

v.

HON. ROBERT H. WYATT, JR.,
CIRCUIT JUDGE
Respondent

Opinion Delivered February 15, 2007

PRO SE PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
JEFFERSON COUNTY, CR 84-358,
HON. ROBERT H. WYATT, JR.,
JUDGE]

PETITION DENIED.

PER CURIAM

Petitioner Jarvis Rhodes is a prisoner incarcerated in the Arkansas Department of Correction serving a sentence of life without parole on a conviction, in 1987, in Jefferson County Circuit Court for capital felony murder. On December 9, 2003, petitioner filed a *pro se* petition for writ of *habeas corpus* pursuant to Act 1780 of 2001, codified as Ark. Code Ann. §§ 16-112-201--207 (Supp. 2003), in which he included a motion that requested DNA testing of skin samples that he claimed had been collected from underneath the victim's fingernails. Now before this court is petitioner's petition seeking a writ of mandamus that requests that we compel the circuit court to hear his Act 1780 claim and issue a final decision in the matter.

Respondent has provided a copy of an order entered in the matter of petitioner's Act 1780 petition on October 13, 2005, in which the court ordered testing of all evidence in the possession of

the Arkansas State Crime Laboratory.¹ The order specifies neither what type of tests are to be performed, nor a date by which the laboratory is to provide a report to the court. Respondent appears to assert that the court has yet to receive any report provided by the laboratory.

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Manila School Dist. No. 15 v. Wagner*, 357 Ark.20, 159 S.W.3d 285 (2004). It is issued by this court only to compel an officer or judge to take some action. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). A petitioner must show a clear and certain right to the relief sought and the absence of any other adequate remedy when requesting a writ of mandamus. *Id.* at 777, 20 S.W.3d at 304. Although the writ cannot be used to control or review matters of discretion, it may be used to force an official to exercise that discretion. *Johnson v. Hargrove*, 362 Ark. 649, ___ S.W.3d ___ (2005). In order to obtain a writ of mandamus, a petitioner must demonstrate that he has no other adequate remedy. *Axley v. Hardin*, 353 Ark. 529, 110 S.W.3d 766 (2003).

Respondent argues that the relief petitioner sought was granted through the order entered October 13, 2005. Yet, the ultimate relief sought in petitioner's Act 1780 petition was not scientific testing of evidence, although the petition did allege that testing would demonstrate his actual innocence. The relief requested in the petition and contemplated by Act 1780 was to have the trial court vacate and set aside the judgment so that a writ of habeas corpus might issue. After more than three years time, petitioner has received a decision that ordered testing to be considered by the court

¹ The trial court erroneously cites to Act 2250 of 2005, which took effect well after appellant's petition was filed, as the basis for the testing. The scientific testing should have been performed pursuant to Act 1780 rather than Act 2250, as Act 2250 did not take effect until August 12, 2005, well after petitioner's petition was filed.

as relevant to that decision, but has yet to receive a final decision as to his claim.

The trial court may order testing by the State Crime Laboratory under Act 1780 in order to facilitate the findings of fact that are required by the act, just as it may order hearings, including the production of evidence and witnesses, as necessary to facilitate its decision-making process. Respondent argues that petitioner has not shown a clear entitlement to an order to compel, that it is not an established right and the circuit court therefore has no corresponding duty to perform. Yet, the trial court granted the order and clearly may act to enforce that order.

Under Act 1780 a number of predicate requirements must be met before a circuit court can order that testing be done. *See* Ark. Code Ann. §§ 16-112-201 to -203 (Supp. 2003). *See also*, *Graham v. State*, 358 Ark. 296, 188 S.W.3d 893 (2004) (*per curiam*). We cannot say on the partial record before us whether those requirements were met, but the trial court clearly found that testing was merited, as it ordered testing to be conducted. Under Act 1780, the State Crime Laboratory was to provide priority to claims that were asserted for lengthy sentences of imprisonment or death. Act 1780 clearly contemplates that, assuming testing was merited, the results are crucial to any decision on the petition. Considering that priority, it is not unreasonable to assume that a report containing results would by now be available.

Petitioner has a right to a final order on his petition, and the trial court does have an obligation to provide a final decision. Where the court has ordered testing, however, the test results are an essential component required for the court to make that determination. If the court has not received those results, any action by the court would be contemplated without information it has previously ruled to be necessary. Under these circumstances, it would appear that petitioner has another remedy available to him.

Respondent asserts that petitioner has not demonstrated that an order compelling the laboratory to test evidence is an established right. Yet, petitioner has made no showing that such a motion that would compel the State Crime Laboratory to comply with the trial court's order and provide the test results would not be granted, if filed in the trial court, either. The petitioner may receive the final decision he seeks, once the trial court has the necessary results.

Because petitioner has not demonstrated that he cannot obtain the relief he seeks through a motion to compel compliance with the trial court's previous order for testing, he has failed to make an adequate showing for this court to grant a writ of mandamus. A mandamus is not a writ of right, but is within the discretion of the court. *Robertson v. Norris*, 360 Ark. 591, 203 S.W.3d 82 (2005). Petitioner has not presented cause for us to exercise that discretion, as another remedy is available to him.

Petition denied.